ARBITRATION OPINION AND AWARD

In the Matter of Arbitration)
)
Between)
)
THE CITY OF KAUKAUNA)
)
And)
)
KAUKAUNA PROFESSIONAL POLICE)
ASSOCIATION)
)

Case 47
No. 41745
MIA - 1402
Decision No. 26061-A

Impartial Arbitrator

William W. Petrie
217 South Seventh Street #5
P.O. Box 320
Waterford, Wisconsin 53185

Hearing Held

September 27, 1989
Kaukauna, Wisconsin

Appearances

For the City

Bruce K. Patterson
EMPLOYEE RELATIONS CONSULTANT
3685 Oakdale Drive
New Berlin, WI 53151

For the Association

WISCONSIN PROFESSIONAL POLICE ASSOCIATION
By Richard T. Little
WPPA/LEER Representative
9730 West Bluemound Road
Wauwatosa, WI 53226

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the City of Kaukauna and the Kaukauna Professional Police Association, with the matter in dispute the terms of a renewal labor agreement to replace the predecessor agreement which expired on December 31, 1988.

After the parties had been unable in their preliminary negotiations to reach full agreement on a renewal agreement, the Union on February 6, 1989, filed a petition with the Wisconsin Employment Relations Commission, requesting final and binding arbitration in accordance with the Municipal Employment Relations Act. After preliminary investigation by a member of its staff, the Commission on June 21, 1989, issued certain findings of fact, conclusions of law, certification of the results of investigation, and an order requiring arbitraiton. On July 19, 1989, it issued an order appointing the undersigned to hear and decide the matter as arbitrator.

A hearing took place in Kaukauna, Wisconsin on September 27, 1989, at which time both parties received a full opportunity to present evidence and argument in support of their respective positions. Both parties closed with the submission of post hearing briefs, after the receipt of which the record was closed by the Arbitrator effective January 2, 1990.

THE FINAL OFFERS OF THE PARTIES

The certified final offers of each of the parties are incorporated by reference into this decision and award.

In their respective final offers the parties were apart on three separate items: contract duration, health insurance and wages. The final offer of the Employer may be summarized as follows:

(1) A two year contract term covering January 1, 1989 through and including December 31, 1990.

(2) Continuation of the present WPS-HMO insurance program and premium payment through August 31, 1989. Effective September 1, 1989 that the program be changed to WPS-Careshare, with an individual annual deductible of $200 per person, $400 for limited family coverage, and $600 for family coverage, and with all deductibles to be paid by the Employer.

Under its proposal the Employer would pay the full monthly premium for single coverage or up to the full dollar amount of the family coverage premium established by WPS for the Careshare plan, effective September 1, 1989. The City additionally proposed to pay all premium increases incurred during the term of the renewal labor agreements between the parties.

(3) Wage increases during the term of the agreement as follows: a 3.5% increase effective 1/1/89, a 1.0% increase effective 7/1/89, a 3.5% increase effective 1/1/90, and a final 1.0% increase effective 7/1/90.

The final offer of the Union may be sumarized as follows:

(1) A one year contract term covering January 1, 1989 through December 31, 1989.

(2) Continuation of hospitalization and medical coverage under WPS-HMO for the duration of the renewal agreement, with the Employer paying 95% of the full monthly premium for both the family and the single plan coverage, with the employee paying the remaining 5% of the monthly premiums.

That the City retain the right to change insurance carriers during the contract term, provided that the new coverage is equal to or better than the prior coverage.

(3) A 4.0% wage increase effective January 1, 1989.

THE STATUTORY CRITERIA

The decision and the award of the Arbitrator in these proceedings are governed by the criteria described in Section 111.77(6) of the Wisconsin Statutes, which provides provides in part as follows:

"(6) In reaching a decision the arbitrator shall give weight to the following factors:

(a) The lawful authority of the employer.
(b) The stipulations of the parties.
(c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
(d) Comparison of the wages, hours and conditions of employment of the employes covered in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:

(1) In public employment in comparable communities.

(2) In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.
(f) The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

POSITION OF THE EMPLOYER

In support of the contention that its final offer was the more appropriate of the two offers before the Arbitrator, the Employer argued principally as follows:

(1) Preliminarily, that the most significant issue in these proceedings is the Employer health insurance proposal. In this connection, that it has proposed the introduction of deductibles for two purposes: first, to raise employee consciousness with respect to the increasing costs of health care and to minimize frivolous use of health care; and, second, to adopt coverage which would facilitate competitive insurance bids from other carriers.

(a) That the City has reached impasse within three bargaining units in 1989, over the same health care proposal, and it bargained a deductible for 1989, for employees in the bargaining unti represented by Local #2150 of the IBEW.

(b) That the City has advanced an identical health care proposal in the single contract open for renewal in 1990.

(2) That the arbitral criterion principally in issue in these proceedings is comparisons, and that interest and welfare of the public and ability to pay considerations may become factors in the future, in the event of continued escalation in health care costs.

(3) That arbitral consideration of the comparison criterion favors selection of the final offer of the Employer.

(a) That the parties agree on five comparables: DePere, Kimberly, Little Chute, Menasha and Neenah; that arbitral consideration should be confined to these five comparisons.

(b) That various additional comparisons advanced by the Union should not be considered in these proceedings, on the basis of type of service provided (Ashwaubenon Public Safety), size (Appleton), form of government (Town of Menasha), and geographical proximity (Two Rivers).

(4) That arbitral selection of the City's health care proposal is supported by consideration of the record in these proceedings

(a) That the scope of coverage proposed by the Employer does not differ significantly from that previously provided. That the only significant change is the introduction of deductibles, and that the City is agreeing to pay all such deductibles.

(b) That the City proposal is more in line with patterns of coverage offered by comparable employers, and that most such employers require employees to pay the deductibles.

(c) That the City's offer maintains the dollar "cap" approach

previously adopted by the parties, and when the deductible commitment is added, it represents higher Employer costs by $9400, than that shown on Association Exhibit #28.

(d) That actuarial advice indicates that a long term slowing of rate growth may be achieved by the introduction of deductible payments in health insurance plans. That the need for such a change is indicated by the 88% increase in health care costs since 1985, which represents annual average increases of 17.7% for the period.

(e) That employers' needs for cost containment in health care costs have been recognized by other Wisconsin interest arbitrators.

(f) That an appropraite quid pro quo for the changes in insurance coverage has been offered by the Employer in the form of Employer paid deductibles, and a wage offer in excess of the pattern among comparable employers. In the latter connection, that the City's offer would maintain the historic position relative to the five comparables, and would provide employees with a 9.28% salary lift over the term of the agreement, some 2% above the pattern for comparables.

On the basis of the above and in summary, the Employer submits that the need to modify health insurance is the over-riding issue, that such modification is more than justified by the City proposed wage pattern and, accordingly, that the Arbitrator should select the final offer of the Employer in these proceedings.

POSITION OF THE ASSOCIATION

In support of the position that its final offer is the more appropriate of the two in issue in these proceedings, the Association argued principally on the basis of a section-by-section review of the statutory criteria.

(1) That there is no dispute that the City of Kaukauna has the lawful authority to accept and abide by the final offer of the Association. Accordingly, that this criterion should have no impact in the final offer selection process.

(2) That there are no stipulations of the parties within the statutory meaning of these terms; accordingly, that this criterion should have no impact in the final offer selection process.

(3) That arbitral consideration of the interests and welfare of the public favors selection of the final offer of the Association.

(a) In the above connection, that the Association's final offer best recognizes the need to maintain the morale of officers in the bargaining unit and. accordingly, to retian the best and the most highly qualified officers.

(b) That the imposition of different benefits and wage scales upon those in the bargaining unit versus other officers in the same localities, would have a negative impact upon officer morale, upon their feelings of accomplishment, upon their unit pride, and upon their quality of performance. Similarly, that the same considerations apply in connection with other employees of the City of Kaukauna.

(4) That there is no dispute that the City has the ability to meet the costs of the Association's final offer.

(5) That arbitral consideration of the comparison criterion supports selection of the final offer of the Union.

(a) Generally speaking, that interest arbitrators should utilize comparisons with other municipalities that are substantially equal to Kaukauna in terms of population, geographical proximity, mean income of employed persons, overall municipal budget, total complement of relevant department personnel, and wages and fringe benefits paid such personnel.

(b) That while the parties agree on the majority of comparables, the cities of Ashwaubenon and Two Rivers should be excluded from arbitral consideration; that the City of Two Rivers is geographically remote, while the Village of Ashwaubenon operates a public safety department which makes comparisons difficult, and it is also the only comparable which has not yet settled for 1989.

(c) Despite its larger size, that the City of Appleton should be included in the comparables, due to geographic location.

(d) Using the Association recommended comparables, that each of the wage offers will maintain relative rankings at the top Patrolman Classification, and both are comparable in terms of monetary cost for 1989. Accordingly, that the final offer selection process should turn upon the issue of health insurance.

(e) That while on their faces the final offer on health insurance both appear to be reasonable, the evidence in the record indicates that the Careshare Plan included in the Employer's final offer provides a little less coverage than the current plan. Further, that the deductible feature provided for in the Employer's final offer will not serve its intended purpose, and the mandatory employee contribution provided for in the Association's offer will provide a buffer against rising health care costs in the future.

(f) That an examination of comparables does not support the Employer's demand for a deductible feature, in that such deductibles are not found in a majority of comparable departments.

(g) That internal comparables do not support the City's final offer, in that only the Association's final offer would mirror the 1989 fire fighter's settlement, and would maintain police and fire parity.

(6) That the interests of the parties would best be served by a single year agreement, in that it would allow them to again address the issue of health insurance in negotiations. That changes in benefits levels are best addressed over the bargaining table, rather than in the interest arbitration process.

(7) That cost of living considerations support the selection of the final offer of the Association.

Despite the unusual situation of the Association arguing in favor of a lower wage increase and mandatory employee contribution for health insurance, that arbitral consideration of the statutory criteria supports the selection of the Association's final offer.

FINDINGS AND CONCLUSIONS

Although the respective final offers of the parties identify contract duration, wages and health insurance as impasse items, both parties argued that the final offer selection process should turn principally upon arbitral consideration of the health insurance changes proposed by the Employer.

The Health Insurance Issue

There can be little doubt that the spiraling costs of health insurance coverage in the 1980s has made it the number one target for cost control as we enter the 1990s, while at the same time unions and employees remain extremely reluctant to voluntarily change programs which have historically been fully paid by employers, and/or those which have shielded employees so well from the impact of the rising costs of health care. Although some measure of cost reduction and control can be achieved through policy or plan redesign relating to how services are authorized and provided, the major and the most effective cost control approaches are seen by employers as consisting of some combination of shared premiums and/or corridors on benefits in the form of individual and family deductibles.

With the above as background, it is easy to understand why many employers have undertaken renewal labor negotiations with the goal of achieving changes in health care coverage. This is a legitimate bargaining goal for employers, and its achievement may be legitimately resisted by unions. In the give and take of private sector labor negotiations, such changes in health care coverage may or may not be achieved, depending upon the relative bargaining strength of the parties, ultimately measured by various factors, including the parties' willingness to strike or lockout in support of their positions. In the public sector in Wisconsin, strikes and lockouts are not readily available in the event of bargaining impasses, and the legislature has provided a substitute terminal point for negotiations at the local government level. The question arises, therefore, as to the extent that an interest arbitrator should be willing to accept or adopt changes in the status quo in the health insurance area.

At this point it will be emphasized that the role of an interest arbitrator is to attempt to put the parties into the same position they would have reached across the bargaining table, had they been able to reach a negotiated settlement, and in this process the neutral will look closely to the parties' past agreements, to their past practices, and to their negotiations history; although neither of these considerations is specifically identified as an arbitral criterion in Section 111.77(6) of the Wisconsin Statutes, it must be recognized that all three factors are frequently used in both the negotiations and in the interest arbitration processes, and they fall well within the scope of sub-section (h) of Section 111.77(6). These considerations are discussed in the following description of the role of an interest arbitrator, from the widely cited book by Elkouri and Elkouri:

> "In a similar sense, the function of the 'interest' arbitrator is to supplement the collective bargaining process by doing the bargaining for both parties after they have failed to reach agreement through their own bargaining efforts. Possibly the responsibility of the arbitrator is best understood when viewed in that light. This responsibility and the attitude of humility that appropriately accompanies it have been described by one arbitration board speaking through its chairman, Whitley P. McCoy:
>
> > 'Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination, upon considerations of policy, fairness, and expediency, of what the contract right ought to be. In submitting this case to arbitration, the parties have merely extended their negotiations - they have left to this Board to determine what they should by negotiations, have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men have agreed to?... To repeat, our endeavor will be to decide the issues, as upon the evidence, we think reasonable negotiators, regardless of their social or economic theories might have decided them in the give and take of bargaining...' . " 1./

In any application of the above principles, it must be emphasized that interest arbitrators are normally very reluctant to overturn or to significantly modify established benefits or programs, unless a very persuasive case had been made by the proponent of change. Two important considerations must, however, be kept in mind in connection with the application of this principle.

(1) First, public sector interest arbitrators are normally more receptive to change than are their private sector counterparts.

1./ Elkouri, Frank and Edna Asper Elkouri, How Arbitration Works, Bureau of National Affairs, Fourth Edition - 1985, pp. 504-505. (footnotes omitted)

(2) Second, any analysis of the final offers of the parties relative to change must be undertaken on the basis of substance, rather than mere form.

In connection with greater public sector interest arbitrator flexibility toward change, it will again be noted that neither party has the real right in Wisconsin to enforce its bargaining demands at the table through economic force. A decision that changes could not be achieved in arbitration would mean than either party could arbitrarily and permanently block such change, and that the parties could, accordingly, be doomed to perpetuation of the status quo ante in many areas of collective bargaining. Such a conclusion would defeat the principle that interest arbitrators are intended to operate as an effective extension of the bargaining process, and should attempt to put the parties into the same position they should have reached at the bargaining table.

In connection with the second principle reference above, it must be emphasized that any analysis of the final offers of the parties must be undertaken on the basis of substance, rather than mere form. In this connection it must be noted that, as shown in Employer Exhibit #7 and as argued by the parties in their post hearing briefs, the Employer's insurance proposal involves only modest changes in coverage. The willingness of parties to accept some change in health insurance has been part of the parties' prior agreement, where they provided in Article XIII that the Employer must continue to provide insurance that was "equivalent" to that previously provided.

The Employer in the dispute at hand is simply not proposing a radical change in either insurance coverage or in cost sharing between the parties, but is rather advocating the adoption of a $200 deductible feature, which deductible is to be paid by the Employer. It is clear that in most such situations it is more expensive to provide first dollar coverage to employees through an insurer, than for an employer to directly pay the deductible amounts. As argued by the Employer, the deductible feature may contribute to a greater employee awareness of the costs of health care coverage, and might also have a positive impact upon the spiraling cost of medical insurance premiums. While the Union's argument that a positive impact might result from premium cost sharing, the fact remains that health care cost increases have averaged 17.7% annually since 1985 under the parties existing health insurance program, and the adoption of deductibles seems to be worthy of consideration.

It could be persuasively argued that the adoption of a deductible feature is equivalent to allowing the camel's nose under the tent, and that such a change is the precurser of further insurance changes in the future. With the continuing escalation in cost of medical and hospitalization insurance, the undersigned has no doubt that the parties will be addressing this area in their future contract renewal negotiations, but the exact form and substance of any future changes cannot be seen at this point in time, and they lie well beyond the scope of the Arbitrator's authority in these proceedings.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the well established reluctance of interest arbitrators to adopt final offers that involve substantial change, cannot be afforded determinative weight in these proceedings. Indeed, the rapid and continuing escalation in the cost of health insurance benefits persuasively supports the

need for both partries to effectively address this matter in their future negotiations.

In next addressing insurance programs among external comparables, the Arbitrator will observe that this criterion simply cannot be accorded determinative weight in these proceedings. As emphasized earlier, the proposed changes in health insurance are not major ones; accordingly, they should not substantially depend upon comparisons for their justification, as might well have been the case if the Employer were proposing major changes in health care coverage. Further, an examination of the contents of Employer Exhibit #9 shows a "mixed bag" both with respect to the existence of deductibles, and relative to employer payment for the deductibles. This conclusion is apparent even if the Union's requests for the exclusion of Ashwaubenon and Two Rivers, and for the addition of Appleton were granted.

What next of the Association's argument that the interest and welfare of the public will be best served by selection of its final offer? While it might be quite true that officer morale would be adversely affected by significant differences in the levels of wages and benefits between comparble employers, the differences in the final offers of the parties are not all that significant. The Arbitrator simply cannot agree that officer morale would be significantly altered to the detriment of the best interests of the public, by selection of a final offer which included the modest insurance changes urged by the Employer. On this basis, the Arbitrator has preliminarily concluded that the interests and welfare of the public criterion cannot be assigned determinative weight in these proceedings.

Although poice and fire parity was once a major negotiations item, and a major factor in interest arbitration, it has become notable for its absence from the process in recent years. There is nothing in the record to persuasively suggest that it has been a major consideration in the parties' recent contract negotiations, or that it should be a significant insurance consideration in the final offer selection process in these proceedings.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the Employer has established a persuasive case for the need for cost control in the area of health insurance, and that arbitral consideration of the entire record and various statutory criteria, support the City's request for modest health insurance changes in the renewal labor agreement.

The Contract Duration Issue

In this connection, the Arbitrator is faced with a one year agreement covering calendar year 1989 as urged by the Union, versus a two year agreement covering calendar years 1989 and 1990 as urged by the Employer. Although neither party considered the contract duration question as a major issue, the Union suggested that an early return to the bargaining table would best serve the interests of both parties by allowing for prompt additional negotiations on the issue of health insurance.

Despite the rather ingenious arguments of the Association on contract duration, it is hard for the undersigned to justify selection of a one year renewal contract that would already have expired at the time that the record

was closed in these proceedings with the receipt of the final post hearing brief. There is nothing in the record to remotely suggest that either party intentionally caused a delay in the completion of the arbitration proceedings, and it seems logical to the undersigned that a renewal labor agrement including the remainder of 1990 would be prefereable to one which would already have expired on December 31, 1989. In this connection it will also be noted that the predecessor agreement was for the two year period covering calendar years 1987 and 1988, and the comparable settlements referenced in Employer Exhibit #14 all reflect multiple year agreements.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that logic, consideration of the bargaining history reflected in the parties' expired agreement, and consideration of external comparables favor the selection of a two year, rather than a one year renewal agreement.

The Wages Issue

In the area of wages it will be noted that the Employer is offering 3.5% across the board increases on January 1, 1989 and January 1, 1990, with additional 1% increases effective July 1 of each year. The Association's final offer provides for a 4% across the board increase on January 1, 1989.

Examination of the comparable settlement patterns for 1989 and 1990, as reflected in Employer Exhibit #10, and arbitral consideration of the benchmark comparisons contained in Association Exhibits #10 - #19 and the summary data contained in Association Exhibits #20 and #21, indicate that both final offers are competitive in the area of wages. The slightly higher costs and the higher wage lift provided for in the Employer's final offer must be considered as having provided something in the way of a quid pro quo for its recommended changes in heath care insurance.

In finally addressing the cost of living criterion, the Arbitrator will observe that it is impossible to conclude, as argued by the Union, that its 5.6% increase for 1989 is more closely attuned to cost of living considerations than the Employer's estimated 5.7% increase for the same year. First, the Employer's total offer is designed to more closely control escalating health care costs, and it should not be evaluated solely on the basis of the Union's cost projections for 1989. Secondly, it is difficult to assign significant weight to cost of living when the final offers of the parties are so close in terms of estimated dollar costs. Third, the Employer's offer is for a two year agreement, while the Union's offer would immediately send the parties back to the bargaining table for negotiations covering calendar year 1990. On the basis of these considerations, the Arbitrator cannot assign determinative importance to the cost of living criterion in the final offer selection process in these proceedings.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that while either final wage offer would be quite competitive, the slightly higher offer of the Employer is justified by its requested changes in health insurance. Accordingly, consideration of the external comparison criterion and arbitral consideration of the wage offer in conjunction with the health insurance component of the Employer's final offer, favors selection of the wage component of the final offer of the City.

Summary of Preliminary Conclusions

As addressed in more significant detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions:

(1) The Employer proposed change in health insurance is the most important of the three impasse items in dispute in these proceedings.

(2) Wisconsin interest arbitrators operate as an extension of the contract negotiations process, and they normally favor the settlement that the parties would have reached across the bargaining table had they been able to do so.

(3) While interest arbitrators are extremely reluctant to overturn established practices or benefits or to innovate, public sector interest arbitrator are more receptive to change than are their private sector counterparts, if the proponent of change has made a persuasive case.

(4) Arbitral analysis of proposed changes should be on the basis of the substance of the proposed change, rather than merely on the form of such a change.

(5) The Employer has established a persuasive case for the need for cost control in the area of health insurance, and arbitral consideration of the entire record and various of the statutory criteria, support the City's request for modest health insurance changes in the renewal labor agreement.

(6) The logic of the current situation, arbitral consideration of the parties' bargaining history, and consideration of external comparables favor the selection of a two year, rather than a one year contract duration in the renewal agreement.

(7) Consideration of external comparisons and arbitral consideration of the wage offers in conjunction with the proposed changes in health insurance, favor the wage component of the Employer's final offer.

Selection of the Final Offer

Based upon a careful consideration of the entire record in these proceedings, including all of the arbitral criteria contained in Section 111.77(6) of the Wisconsin Statutes, the Impartial Arbitrator has concluded that the final offer of the Employer is the more approriate of the two final offers.

AWARD

Based upon a careful consideration of all of the evidence and argument advanced by the parties, and a review of all of the various arbitral criteria provided in Section 111.77(6) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the City of Kaukauna is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the final offer of the Employer, hereby incorporated by reference into this award, is ordered implemented by the parties.

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

February 8, 1990